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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

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THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.1237 of 2012

M.Promoth

...Appellant/Petitioner

-vs-

1. Sri Lakshmi Saraswathi Motor Service
No.84 A, Thanduma Nagar,
Jawaharlal Nehru Road,
Chennai - 600 016.
(R1 was set exparte in the Trial Court)

2. National Insurance Co. Ltd.,
Plot No.C-20, AD 1-II Avenue,
Anna Nagar,
Chennai - 600 040.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 01.08.2011 made in MACT.O.P.No.2074 of 2009 on the file of the IV Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Ms.V.Suguna

For Respondents: Mr.S.Vadivel for R2
R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 01.08.2011 made in MACT.O.P.No.2074 of 2009 on the file of the IV Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.



3. The case of the claimant is that, when the claimant was riding his motor cycle along with one Vijayakanth, a bus which was driven by its driver in a rash and negligent manner and dashed against the motor cycle. Due to the accident, the claimant and the pillion rider sustained grievous injuries. The bus was owned by the first respondent and was insured with the second respondent. As a result of the accident, the claimant sustained grievous injuries on his head and undergone surgery on his head. His permanent disability was assessed at 70% by the Doctor. Hence, the claim petition.

4. Resisting the same, the second respondent filed counter disputing the age, occupation, employer, monthly income, nature of injuries and period of treatment including the disability sustained by the claimant. The driver of the bus owned by the first respondent driven his bus in a normal speed with care and as such the accident was not took place due to the rash and negligent driving of the driver of the bus.

5. On the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P19 were marked. On the side of the respondents no one was examined and no exhibits were marked. On a perusal of the evidence available on record and also considering the submissions made by the learned counsel appearing on either side, the Tribunal awarded a a sum of Rs.9,50,100/- (Rupees Nine Lakhs Fifty Thousand One Hundred only) as compensation payable by the second respondent. Aggrieved by the same, the claimant filed the present Civil Miscellaneous Appeal for enhancement of the award.

6. The learned counsel appearing for the appellant would submit that the claimant was only 19 years at the time of accident and the disability was assessed at 70%. He sustained head injury and he undergone two surgeries. Initially, he was admitted in Hospital from 11.06.2009 and took treatment till 04.07.2009. Again he was admitted in Hospital for further treatment on 13.08.2009 and he was discharged only on 17.08.2009. He had undergone two surgeries and due to the head injury, he could not able to continue his avocation. Even then, the Tribunal awarded a very meagre amount as compensation.

7. Per contra, the learned counsel for the second respondent would submit that the claimant was admitted as in-patient in hospital for 26 days, for which, the Tribunal has rightly awarded the compensation under the head of Pain and Sufferings at Rs.50,000/-. Though the Doctor who treated the claimant assessed the disability of claimant at 70%, the Tribunal awarded a sum of Rs.2000/- per percentage for the permanent disability. It is only a partial permanent disability and as such, the Tribunal rightly awarded compensation at Rs.9,50,100/-.



8. Heard Ms.V.Suguna, learned counsel appearing for the appellant and Mr.S.Vadivel, learned counsel appearing for the second respondent.

9. The claimant filed the present appeal for enhancement of compensation. The Tribunal awarded a sum of Rs.36,000/- for loss of income, for transportation to the Hospital a sum of Rs.3000/- was awarded and the same are liable to be enhanced. Insofar as the Pain and Sufferings is concerned, the Tribunal awarded only Rs.50,000/-, whereas the claimant who was admitted in hospital as in-patient for 26 days and he had undergone two surgeries. Hence, the compensation awarded for pain and sufferings is liable to be enhanced.

10. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.36,000/-	Rs. 36,000/-
2	Transportation to Hospital	Rs.3000/-	Rs. 15,000/-
3	Extra Nourishment	Rs.10,000/-	Rs. 20,000/-
4	Damage to Clothes	Rs.1000/-	Rs. 1000/-
5	Medical Expenses	Rs.6,90,100/-	Rs.6,90,100/-
6	Attenders Charges	Rs.20,000/-	Rs. 30,000/-
7	Pain and Sufferings	Rs.50,000/-	Rs. 75,000/-
8	Partial Permanent Disability	Rs.1,40,000/-	Rs.1,40,000/-
	Total	Rs.9,50,100	Rs.10,07,100/-

12. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.9,50,100/- to Rs.10,07,100/-.

(ii) The enhanced award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The appellant is not entitled to any interest for the delay period if any in filing this Civil Miscellaneous Appeal.

(iv) The second respondent is directed to deposit the enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of six



weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the appellant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) There shall be no order as to costs.

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Sd/-
Assistant Registrar(CJ-Conf)

//True Copy//

Sub Assistant Registrar

rna

To

1. The IV Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.C.Munusamy, Advocate, S.R.No.25632

+1cc to Mr.S.Vadivel, Advocate, S.R.No.25551

C.M.A.No.1237 of 2012

NMI (CO)
RGA (28/10/2021)